IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 181 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KHIMJIBHAI MEGHJIBHAI

Appearance:

Criminal Appeal No. 181 of 2001

MR SJ DAVE, APP for Petitioner

MR HRIDAY BUCH for Respondent

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/03/2003

ORAL JUDGEMENT

The State of Gujarat has filed the present acquittal appeal under Section 378 of the Code of

Criminal Procedure, 1973 (for short, "the Code"), in order to challenge the judgment and acquittal order dated 05/10/2000 recorded by the learned Judicial Magistrate First Class at Dhari, Amreli District, in Criminal Case NO. 367 of 1995 under which the learned Magistrate acquitted the present respondent, from offences punishable under Section 452 and 354 of IPC.

2. The facts of the case of the prosecution before the trial court may be briefly stated as follows;

On 13/03/95 at about 1.00 AM, the informant was sleeping in a quarter of Police Line at Khamba, in Amreli District. The contesting respondent who was also serving in the Police Department, was staying in the neighborhood. According to the case of the prosecution, the respondent entered the wada of the informant and entered the room, wherein the informant was sleeping. It is also alleged that the respondent dragged the informant towards the wada and made an indecent demand. The informant resisted and therefore, the respondent ran away from there. As the husband of the informant was on duty, she informed him about the said event, when he returned from duty on the next day morning. Thereafter, FIR was filed and after investigation, chargesheet was filed. After the trial was over, the learned Magistrate recorded acquittal order.

3. Feeling aggrieved by the said judgment and acquittal order of the trial court, the State of Gujarat has preferred this appeal before this Court. It has been contended here that the trial court has committed serious illegality in the appreciation of evidence on record and therefore, the acquittal is illegal.

4. At the hearing, I have heard Mr.S J Dave, learned APP for the State and Mr.H C Buch, learned advocate for the respondent. It appears that the State was late in filing the acquittal appeal and therefore, the application for condonation of delay was made. At the hearing of the said application, Mr.H C Buch learned advocate appeared for the respondent and therefore, he has continued to appear on behalf of the respondent. As he is present at the hearing today, he has also been heard.

5. Learned APP has argued that there was sufficient material on record, before the trial court, to hold the

present respondent guilty for the aforesaid offences. He has taken me through the judgment of the trial court and also through the evidence of relevant witnesses.

6. It appears that the informant - Minaben Shashikant has tendered oral testimony before the trial court, Ex. 24, stating that her husband was on duty at the relevant point of time and the present respondent who was serving in the Police Department, entered her room and dragged her to the wada and extended indecent demand.

7. The prosecution has tried to support the evidence of the said witness, by the evidence of her husband. However, there are apparent contradictions between the evidence of these two witnesses. The informant, has stated that she was dragged towards the wada, when she was standing. Her husband has deposed that the respondent dragged the informant and therefore, there were injuries on her buttocks. No medical evidence has been produced in this regard. Moreover, the informant was also not referred to the Medical Officer, for examination and opinion. This shows that no injury was caused to the informant, as deposed by the husband. Moreover, the informant herself, has made it clear that she has not sustained any injury, at the time of the aforesaid event. There also she stands contradicted by the evidence of her husband. The husband had also stated that the informant had injuries on her forearms, by means of nails. The informant has stated that she did not have any such injury. She was not referred to the Medical Officer for examination and there is no evidence of medical examination on record and therefore, with respect to these injuries also, on the one hand there is contradictory versions between the informant and the husband, and on the other the said fact is not supported by medical evidence.

8. It is a fact that the informant was staying in a Police Line. The respondent was staying in her neighborhood, in the same Police Line. Other quarters of police officials, were around the said house of the informant. The informant has not stated in her evidence that she had raised shouts, when the respondent tried to drag her towards the wada. The conduct is apparently not acceptable and natural. Once it is found by a woman that she is being dragged towards a wada, by a male person at midnight hours, then naturally, she would raise shouts. But, in the instant case, she has not raised shouts and no reason has been given by her for not raising shouts.

9. On the other hand, her husband, Shashikant, has

given a different version. There he has stated that the informant tried to raise shouts, but, she was threatened and therefore, she could not raise shouts. On this point also, there is apparent contradictions between the evidence of the informant and her husband.

10. Then, we find that a defence was taken that there was some dispute between the two families and the PSI had taken some interest, in favour of the informant and her family. Here, there is an apparent contradiction on the point as to who had recorded the FIR. Though some evidence had come on record to show that the FIR was recorded by the PSI, the said Officer has not been examined. It is more so when there were some allegations against the PSI for favouring the informant and her family. The adjoining neighbour witnesses have been examined and they have not supported the case of the prosecution.

11. In above view of the matter, considering the conduct of the informant at the time of event, considering the contradictory versions of the two witnesses, considering the fact there was some sort of enmity between the two families and considering the fact that the trial court had an opportunity to record the demeanor of witnesses when they tendered evidence from the witness box and when the trial court has given cogent and sufficient reasons for acquitting the respondent, I am of the opinion that this is not a fit case for exercising powers to reverse the order acquittal and to convict the respondent.

12. This being an acquittal appeal, this Court has to be extremely slow in interfering with the acquittal judgment, recorded by the trial court.

13. In view of the facts and circumstances of the case, I am of the opinion that there is no merit in the acquittal appeal. Therefore, it is ordered to be dismissed at admission stage.

(D. P. Buch, J.)

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